Architectural Research Corporation *and* Gregory Sitarski and Phillip Searls. Cases 7-CA-19153(1) and 7-CA-19153(2)

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND ZIMMERMAN

On 6 December 1982 Administrative Law Judge Thomas R. Wilks issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Architectural Research Corporation, Livonia, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the administrative law judge.

CHAIRMAN DOTSON, dissenting:

I cannot agree with my colleagues' adoption of the Administrative Law Judge's findings that (1) employees Phillip Searls and Gregory Sitarski on 31 March 1981 engaged in protected activity in the nature of a grievance about the restoration of an afternoon break, which had been eliminated by agreement of Respondent and the Union, and (2) their discharge for said conduct violated Section 8(a)(1) of the Act. For reasons which follow, I would find that Searls and Sitarski were not entitled to the protection of the Act because they were not seeking to present a grievance to Respondent but were in fact attempting to bargain with the latter in derogation of the Union's status as the exclusive bargaining agent of the employees.

The record shows that the Union and Respondent were parties to a collective-bargaining agreement for the period from 1 May 1979 to 30 April 1982, and that the latter, which was experiencing economic difficulties, presented to the Union a number of proposals including a reduction of break periods from two to one per shift. At a meeting on 6 October 1980, conducted by the Union's business agent and attended by Searls and other unit employees, all of the proposals were approved and thereupon incorporated in the collective-bargaining agreement. Sitarski, who did not attend because he was on layoff status, was thereafter apprised by Searls as to what had transpired at the meeting.

According to the credited testimony of Sitarski and the union steward, Tony Paglione, concerning the latter's conversation on 26 March 1981, or soon thereafter, with Searls and Sitarski about the loss of the afternoon break on their shift, Paglione reminded them that they were not receiving a second break because the employees had voted to accept its elimination to aid Respondent to stay in business and that they would "have to live with" the contract as modified. Paglione then told Searls that, if he disagreed, he could file a grievance with the Union. However, neither employee did so.

According to the credited testimony of David Flodquist, Respondent's second highest official, Searls sought him out on the evening of 30 March concerning the restoration of the afternoon break, and Flodquist responded that such a change in the revised collective-bargaining agreement would have to be negotiated with the Union. On the following morning, Flodquist approached Paglione and suggested that restoration of the afternoon break might be an appropriate subject for negotiation upon the return of Respondent's general manager from his vacation. According to the credited testimony of Sitarski and Searls, Paglione did not advise them of Flodquist's overtures and told Searls that his only recourse was to file a grievance

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] For the reasons fully set forth in the Administrative Law Judge's Decision, we do not agree with the Chairman that the meeting of employees Searls and Sitarski with Respondent's manufacturing engineer, Flodquist, on the afternoon of 31 March 1981 constituted unprotected bargaining in derogation of the Union under *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50 (1975). The credited testimony reveals that the employees intended only to *discuss* their desire for a second break period with Flodquist, and that Flodquist was so informed by his supervisor, Ferrari. Employees' presentation of grievances, in the absence of attempted direct negotiation with the employer, represents protected activity. E.g., *Richardson Paint Co. v. NLRB*, 574 F.2d 1195, 1207 (5th Cir. 1978).

Nor can we accept the Chairman's characterization of the employees' departure from the production line as unpermitted. According to the credited testimony, Supervisor Ferrari suggested that Searls and Sitarski proceed to the lunchroom for the meeting with Flodquist. The Administrative Law Judge found that Ferrari failed even to suggest to the employees that they return to their work stations.

[3] The Administrative Law Judge inadvertently failed to cite *F. W. Woolworth Co.*, 90 NLRB 289 (1950), for the formula to compute backpay. We hereby amend "The Remedy" accordingly.

with the Union about reinstituting the afternoon break. The same morning Searls again spoke to Flodquist on this subject and the latter replied that it "would have to be discussed." That afternoon at 2:30 p.m., the time of their preexisting break, Searls and Sitarski stopped work and asked their immediate supervisor, Matthew Ferrari, if they could take their break. Ferrari thereupon referred the matter to Flodquist who discharged them when Searls reiterated their request for the immediate resumption of the afternoon break.

It is clear from the foregoing credited evidence that on the afternoon of 31 March 1981 Searls and Sitarski derogated the Union's exclusive status as the employees' bargaining agent by requesting an immediate restoration of the afternoon break in violation of the contractual provisions which had been previously approved by the employees. As the Supreme Court held in *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50 (1975), protection of an attempt on the part of employees to supplant a union by dealing directly with an employer concerning changes in an existing collective-bargaining agreement would contravene the cardinal statutory principle of exclusive representation of employees by their bargaining agent.

Contrary to the Administrative Law Judge, the request of Searls and Sitarski that Respondent deviate from or change the terms of the collective-bargaining agreement went far beyond the mere presentation of a grievance to Respondent. What occurred here was that these two employees took matters into their own hands by directly approaching Respondent after they were told by the union steward that they "would have to live with" the terms of the current collective-bargaining agreement and that their only recourse was to file a grievance with the Union. The dissatisfaction of the two employees with what they may have regarded as the Union's unresponsiveness cannot justify or legitimize their circumvention of the Union as the exclusive bargaining agent. Although the Administrative Law Judge found that, in any event, Ferrari, the immediate supervisor of Searls and Sitarski, gave them implicit, if not explicit, permission to cease work by telling them to wait while he submitted their request for resumption of the afternoon break to Flodquist, that finding is totally without merit as Ferrari, rather than condoning their unprotected conduct, acted promptly and properly in referring the matter to a higher official.

Accordingly, I would dismiss the complaint on the ground that Searls and Sitarski engaged in the unprotected conduct of attempting to assume the Union's role as the employees' exclusive bargaining representative.[4]

[4] The case cited by my colleagues, *Richardson Paint Co. v. NLRB*, 574 F.2d 1195 (5th Cir. 1978), is inapposite as it, unlike the situation herein, involved the protected right of an employee to file a grievance in protest of certain layoffs and did not seek to alter the terms of a collective-bargaining agreement.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

Accordingly, we give you these assurances:

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the Act by discharging them for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Section 7 of the Act.

WE WILL offer Gregory Sitarski and Phillip Searls reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay, with interest, they may have suffered as a result of the 31 March 1981 discharge.

WE WILL expunge from our files any reference to the disciplinary discharge of Gregory Sitarski and Phillip Searls on 31 March 1981, and WE WILL notify them that this has been done and that evidence of this unlawful dis-

charge will not be used as a basis for future personnel actions against them.

ARCHITECTURAL RESEARCH CORPORATION

DECISION

STATEMENT OF THE CASE

THOMAS R. WILKS, Administrative Law Judge: This case was heard at Detroit, Michigan, on June 24 and 25, 1982, pursuant to charges filed by Gregory Sitarski and Phillip Searls, individuals, against Architectural Research Corporation, herein called Respondent, and a complaint issued by the Acting Regional Director for Region 7 of the Board which alleges that Respondent violated Section 8(a)(1) of the Act in that "on or about March 31, 1981, Respondent at its Livonia [Michigan] plant, by its agent David Flodquist, discharged Gregory Sitarski and Phillip Searls in retaliation for their having complained, jointly and in concert, about the Employer's discontinuing granting employees an afternoon break."

All parties were given full opportunity to participate, to produce competent, relevant, and material evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. The parties filed written briefs on August 23 and 24, 1982.

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following:[1]

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware and has maintained its only office and place of business at 13030 Wayne Road, Livonia, Michigan, herein called the Livonia plant. Respondent is, and has been at all times material herein, engaged in the manufacture, sale, and distribution of concrete wall panels, resinous floor block, solar tile, and related products. Respondent's plant located at 13030 Wayne Road, Livonia, Michigan, is the only facility involved in this proceeding. During the year ending December 31, 1980, which period is representative of its operations during all times material hereto, Respondent, in the course and conduct of its business operations, purchased and caused to be transported and delivered at its Livonia plant goods and materials valued in excess of $50,000 which were transported and delivered to its plant in Livonia, Michigan, directly from points located outside the State of Michigan. During the year ending December 31, 1980, which period is representative of its operations during all times material herein, Respondent, in the course and conduct of its business operations, manufactured, sold, and distributed at its Livonia, Michigan, plant products valued in excess of $50,000 which were shipped from said plants directly to points located outside the State of Michigan.

[1] Errors in the transcript are hereby noted and corrected.

It is admitted, and I find, that Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *Facts*

Respondent's production and maintenance employees are represented for collective-bargaining purposes by Local Union No. 247, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Union. The most recent collective-bargaining agreement between the Union and Respondent was executed on May 1, 1979, and effective until April 30, 1982, and automatically renewable thereafter in the absence of appropriate notice of contrary intent. The Union's status as exclusive bargaining agent of an appropriate bargaining unit is not in issue and is clear from the record. Similarly, Respondent's obligation to recognize and bargain with the Union as the exclusive employee designated bargaining agent is conceded.

On October 6, 1980, at a meeting conducted by union business agent Duncan, the Union submitted to employees in the bargaining unit six specific proposals by Respondent whereby it sought economic relief purportedly necessary for its continued viability, i.e., a freeze in the cost-of-living proviso, a reduction of paid holidays, elimination of plantwide seniority and institution of departmental and classification seniority of the two departments comprising Respondent's operation (the AR-Lite and AR-Blok departments), a reduction of break periods from two periods a shift to one per shift, a reduction in vacation benefits, and a modification of the union-security clause.

Charging Party Searls, a member of the Union, testified that he attended the October 6 meeting and that the employees accepted the six proposals which thereafter were incorporated as a modification to the collective-barqaining agreement. At the time Searls, an AR-Blok department worker who had been hired in 1979, was on layoff status. AR-Blok worker and Charging Party, Sitarski, a nonmember of the Union who was hired in April 1980, was also on layoff status on October 6, but was unaware of the meeting and therefore did not attend. Searls was recalled to work on December 6, 1980, but was laid off again on January 6, 1981. He testified that the October 6 modifications had been effectuated during the period when he had returned to work. It is not clear from his testimony whether all or only a part of those modifications had been effectuated. Clearly, however, the afternoon break was eliminated.

On February 20, 1981, Searls visited Respondent's plant and observed AR-Lite department employees working on tasks in the AR-Blok department. Searls concluded that this was a violation of the October 6 contract addendum with respect to the creation of departmental seniority. He reasoned that if AR-Lite workers did not have sufficient work they could not, in effect, "bump" AR-Blok workers out of work. Searls testified

that he attempted to find out whether the October modifications were in effect and he therefore consulted with union steward Tony Paglione, who told him, without explanation, that "the six proposals that we voted on were, in fact not part of our contract." According to Searls, he asked Paglione whether he could therefore file a grievance to recover the loss of vacation pay he had suffered in consequence of the October 6 modification proposals, and Paglione instructed him to wait until Searls was recalled to work. Searls did not then file a grievance.

Paglione testified that a conversation with Searls did occur on February 20, but that he did not tell Searls that the October 6 modification proposals were not part of the collective-bargaining agreement. However, Paglione did not testify as to the substance of the conversation.

Searls and Sitarski were recalled to work in the AR-Blok department on March 25, 1981. Sitarski was surprised to discover that the afternoon break had been eliminated. He was informed by Searls of the October 6 proposals and their acceptance by the Union and its members. Searls concluded, apparently in concert with Sitarski, that production had increased from the prelayoff level. Searls testified that on March 25 or 26 he had a conversation in the plant with Paglione wherein he asked Paglione why the employees were not receiving a second break, whether the October 6 proposals were in effect, why the "older men" (presumably AR-Lite employees) had continued to work on AR-Blok work while he and Sitarski had been on layoff status, and what could be done about it.[2] According to Searls, Paglione told him that he "would have to file a grievance." Sitarski testified that he decided to talk to Flodquist directly before filing a grievance. It is not clear from Searls' testimony whether Sitarski was present at this conversation.

Sitarski initially testified that he and Searls engaged in conversations regarding a second break with Paglione on March 26, 28, or 30. Thereafter, he was uncertain as to how many conversations occurred, on what dates they occurred, and whether Searls was present at all or any of these conversations. Sitarski's testimony as to Paglione's response is inconsistent with that of Searls. According to Sitarski, Paglione responded that the employees had previously voted to accept a reduction in breaktime and would therefore have to "live" with their decision. Sitarski testified also that Paglione nonetheless further responded that he, Paglione, "would talk to management." On cross-examination Sitarski conceded that Paglione made no response to the effect that any of the October 6 concessions were invalid nor made any suggestion that there was any question as to their validity. Although confused in many areas, Sitarski testified credibly with certainty that Paglione told him in an individual conversation that he could not file a grievance because he was not a union member. Paglione did not contradict him. I credit Sitarski. Sitarski's testimony as to further conversations with Paglione and Shift Supervisor Ferrari regarding his eligibility for union membership is confused.

Paglione was uncertain as to how many conversations he had with Searls and Sitarski with respect to the afternoon break and whether they were each present at all of these conversations. However, his testimony as to his response is more in accord with that of Sitarski, i.e., he responded that when asked why employees did not receive a second break he reminded them that the employees had voted to accept the elimination of the second break and therefore had agreed to that economic concession in order to aid Respondent in its attempts to stay in business for the duration of the current contract and that they would have to "live with it." Paglione recalled specficially reminding Searls that he, Searls, had attended the October 6 meeting and was aware of the situation but Searls protested that "there was no such thing to terminate a break after a contract." Paglione testified that he then told Searls that if he disagreed with him the "only thing" Searls could do was to file a grievance and "then we'll take it from there." Paglione further testified that Searls stated that he, Searls, would go "downtown" (i.e, the union hall) to file a grievance, and that he told Searls to go ahead and file a grievance but that he had grievance forms in his locker if Searls wanted them. Paglione's testimony to the effect that there was no need for Searls to leave the premises to file a grievance was unrebutted. Subsequently, prior to their discharge, neither Searls nor Sitarski asked for a grievance form. Nor did they attempt to go "downtown."

As to the foregoing with respect to conversations on or about March 26 regarding the subject of an afternoon break, I credit Paglione. His testimony was more assured, certain, and detailed than Searls' and Sitarski's and was in accord in large measure with Sitarski's testimony as to Paglione's responses. Even if separate conversations occurred with Searls and Sitarski, it is unlikely that Paglione would have responded as Searls testified, having responded to Sitarski in the manner testified to by Sitarski. Therefore, inasmuch as I find that Paglione did not take the position on or about March 26 that the October 6 concessions were ineffectual or invalid, as testified to by Searls, I further find that it is unlikely that Paglione took that position on February 20. Accordingly, I credit Paglione's denial of such assertions on that date.

Searls testified that he did not file a grievance because he wanted to talk about the matter first with David Flodquist, Respondent's manufacturing engineer in charge of production and second in command to Respondent's general manager, Marcel Fermani. Prior to talking to Flodquist, Searls and Sitarski discussed the lack of a second break and concluded that it was unfair. Searls testified that he and Sitarski approached Flodquist in his office immediately after the end of the workday on March 30 and that he asked Flodquist why there was no second break, to which Flodquist responded that it was not his "department" and that they should "talk to Tony [Paglione] about it." According to Searls, he also asked Flodquist why he had hired a certain "Mr. Chong" as a new employee during Sitarski's and Searls' layoffs, to which Flodquist stated that he was paying Chong the "minimum wage." Searls further testified that he protested that by such conduct Flodquist was in violation of the collective-bagaininig agreement but that Flodquist retorted that "he did it because he wanted to and he runs things around there." According to Searls, there was no

[2] There is some minor variance between his direct and cross-examination testimony as to what occurred.

more to the conversation inasmuch as Flodquist spoke to them brusquely and impatiently as he was eager to leave the office.[3]

Sitarski's recollection of the Flodquist conversation is again somewhat at variance with Searls' testimony. According to Sitarski, Flodquist's explanation to Searls for the hiring of Chong was that Flodquist offered an excuse to the effect that he was unable to contact Searls on the telephone and that he was in need of workers. With respect to the inquiry about the second break, according to Sitarski, Flodquist responded that he, Flodquist, would convey their inquiry to Fermani. Sitarski recalled nothing further regarding the Chong hiring or the break issue.

According to Flodquist, the evening of March 30 was the first occasion when any of the 35 unit employees had raised the question of a second break subsequent to the October 6 agreement on the concessions. According to Flodquist, Searls directed the thrust of his conversation to his concern over the hiring of a new employee during the time when he was on layoff status, and Sitarski made inquiries as to his seniority date with reference to union membership eligibility. Flodquist could not recall all of the conversation but he did recall with certitude that as to the second break inquiry he responded that it had to be a negotiated matter, i.e., renegotiated, and that since it was all part of an amendment to the collective-bargaining agreement it had to be discussed with Paglione and possibly with union business agent Duncan and Fermani who was out of town. He did not dispute Searls' characterization of his demeanor as having been impatient and brusque.

In light of the failure of Sitarski to corroborate Searls, and also the fact that Sitarski's testimony is somewhat corroborative of Flodquist's version of the conversation, I credit Flodquist as to the discussion about the break period. In the absence of contradictory testimony as to the discussion regarding the hiring of Chong, I credit Searls despite the lack of corroboration by Sitarski. Finally, Searls' testimony to the effect that Flodquist on one hand asserted managerial prerogative with respect to hiring new employees but deferred to the Union on breaks is patently improbable.

Flodquist testified that, after the Searls-Sitarski March 30 conversation, early on March 31 he had approached Paglione and suggested that the restoration of the afternoon break might be an appropriate subject for negotiations upon Fermani's return. According to Flodquist, the installation of new plant equipment had resulted in increased productivity and Respondent at that time was contemplating renegotiation of some of the October 6 concessions, and with respect to the restoration of the break period that matter was the subject of continuing discussions with Paglione. Neither the General Counsel nor Respondent elicited rebutting or corroborating testimony from Paglione, a witness called by Respondent, as to the discussion in reference to the renegotiation of the afternoon break. It is implicit in Flodquist's testimony that the Union's position was in favor of the restoration of the afternoon break.

[3] On cross-examination, Searls recalled that Sitarski had inquired about his eligibility stautus for union membership during this conversation.

Clearly from Searls' and Sitarski's testimony, uncontradicted in this respect by Paglione, Paglione did not advise them that the Union was in the process of seeking renegotiation of the afternoon break concession. From all accounts it appears that Paglione advised Searls and Sitarski that the elimination of the afternoon break was a condition they had to "live with" for the duration of the contract until April 1982 and their only recourse was to file a grievance from which point the Union would "take it from there."

The shift starting time on March 31 was at 8 a.m. At the commencement of the shift Flodquist announced an attainment of an exceptionally high productivity goal on the day earlier. It is Flodquist's unrebutted and credible testimony that shortly before lunch, while he was out in the work area, Searls made another brief comment as to the need for an afternoon break, to which Flodquist explained that it was a matter that "would have to be discussed." He did not specify when, where, or with whom. According to Searls, on March 31, also shortly before lunch, Searls and Sitarski engaged in a conversation between themselves wherein they discussed the lack of an afternoon break. Searls testified:

> We—we wanted to find out what we could do about having two breaks if the proposals were no good. We should be getting our two breaks. So, we wanted to find out how we could get our two breaks.

Searls' basis for concluding that the October 6 concessions were invalid was premised on his purported observations and conclusions that Respondent had not abided by the October 6 agreements with respect to seniority.

Early on the morning of March 31, according to Searls, he engaged in a conversation with Paglione wherein he asked Paglione whether there was some way he could obtain a second break without having recourse to the grievance procedure, but Paglione told him that he would have to file a grievance. Searls testified that he next talked to Paglione alone at lunch between 12 and 12:30 p.m. and told him that he was "going to go down to the NLRB and the union hall and file the grievance."

Searls testified that he explained to Paglione that he had encountered a nonresponsiveness from the Union in past dealings and that Paglione merely "advised" him to "finish the day and then go down there." Paglione essentially corroborated Searls, except as to the nonresponsiveness accusation, which he did not contradict. I credit Searls.

Sitarski and Searls testified that during the same lunch hour they left the premises and from a nearby public telephone Sitarski telephoned the Regional Office of the Board. There is no evidence that Respondent was aware of their call. Sitarski testified that their subsequent conduct was not based on the discussion he had with a Board agent, but Searls testified that this conversation was the reason they decided to have further confrontation directly with Flodquist.

It appears from the entire testimony of Searls that he did not talk to his immediate supervisor, Matthew Ferrari, about the need for a second break prior to March

31. Sitarski at times in his testimony confused Flodquist with Ferrari, but I conclude from his entire testimony that he spoke to Ferrari prior to March 31 with respect to that subject. What he said to him beyond merely inquiring about why he was not entitled to an afternoon break is unclear. Ferrari did not contradict him.

Searls testified that at the time immediately after talking to the Board agent on the telephone he and Sitarski agreed on confronting Ferrari at 2:30 p.m., the time of the preexisting afternoon break. Searls, on direct examination, testified: "At 2:30, Greg Sitarski and I went up to him and asked him if we could take our break." Sitarski merely testifed that at 2:30 he and Sitarski encountered Ferrari and, noting that the production was high that day, they asked "whether we could get our breaks." Searls testified that the conversation occurred while Ferrari was operating a forklift truck which was then adjacent to the mixing platform which constitutes Searls' work station. Sitarski testified that Ferrari had just returned from the outside area with a full sand hopper and had just stepped down off the forklift truck. According to Sitarski and Searls, Ferrari responded that he could not authorize their breaks but stated that if they would proceed to the lunchroom and wait there he would bring Flodquist there to speak to them. According to their testimony, they then immediately walked to the lunchroom where, after 2 or 3 minutes, Flodquist appeared with Ferrari, and the critical confrontation occurred with Flodquist.

Ferrari testifed as to the events leading up to that confrontation as follows: Ferrari had been outside the plant having exited with the forklift truck in order to fill a sand hopper to resupply the product mix at Searls' duty station. Ferrari was about to reenter the doorway, but was encountered by Searls who had come out of the plant and stated that "they were going to take their break." Ferrari responded, "Well you can't do that-there is no two-thirty break." Searls stated, "Well, we're goint to take one anyway." Ferrari said, "[Y]ou can't-you would have to talk to Dave [Flodquist] about that." Searls then said, "We want to talk to Dave [Flodquist]." At that point Sitarski walked out and joined them. Ferrari told them, while still outside the rear of the plant, "I'm going to get Dave. Wait right here." On cross-examination he testified that he told them, "Wait, and I'll get Dave Flodquist." He did not say "wait right here." He also explained to them that he had to "put the sand hopper first." On cross-examination he testified that he did not specify to them where they should wait. Ferrari then proceeded with the forklift truck and parked it, and immediately walked almost the length of the plant to Flodquist's office, a distance of 100–125 feet. On his way to the office, after the elapse of 2 or 3 minutes, he noticed that Sitarski and Searls were standing in the plant area in front of the lunchroom. As he moved past them he told them to wait there while he went to get Flodquist. Although there are significant variances between the testimony of the alleged discriminatees and Ferrari, it is clear that at no time did Ferrari order, request, or suggest to the two employees that they return to their work stations, nor did he threaten them with any discipline immediately.[4] Rather, from Ferrari's own account, he acquiesced with their request to stop work and meet with Flodquist in that he told them to wait and that he would arrange a meeting between them and Flodquist to discuss the request for a break after the short elapse of time required to unload the forklift truck, a matter of minutes. The major discrepancy is where they were told to wait, i.e, inside or outside the lunchroom. I credit Searls and Sitarski. Although their entire testimony is flawed by inconsistencies, evasions, confusion, and uncertainty, I find them more credible than Ferrari, who far surpassed them in those same deficiencies, and who impressed me as a most disingenious and unconvincing witness, completely lacking in responsiveness and the type of spontaneity indicative of candor.

The next event in this sequence occurred when Ferrari spoke to Flodquist in the lunchroom. According to Flodquist, the following events commenced at some time between 2:30 and 2:35 p.m. when Ferrari entered his office and announced, "Phil and Greg walked off the line." Flodquist asked why, and Ferrari started to respond and stated that Sitarski and Searls had told him they were taking a break. Before Ferrari could finish his response in 30 seconds, Flodquist rushed out of his office to encounter the employees in the plant lunchroom alone, without Ferrari, without further explanation from Ferrari, and with no suggestion from Ferrari that they had disobeyed any order to return to the line.[5] Flodquist explained in his testimony that his reaction was due to his concern for production, but clearly no information had been put to him in those 30 seconds as to the duration of the employees' brief departure from the production line or any immediate impact on production. There is sufficient credible evidence in the record to establish that departures of a few minutes' duration are not extraordinary.

Ferrari's account of his conversation with Flodquist provides a starkly different perspective. According to his direct examination, the following sequence occurred: Ferrari went into Flodquist's office where he found him seated at his desk. He told Flodquist that Sitarski and Searls "wanted to take a break and that-they wanted to talk to you." Flodquist asked, "[W]here are they?" Ferrari testified:

> And, I said, "I don't know where they are at." I said, "I guess they are in the lunch room," because they weren't standing there where I told them to wait for me.

On cross-examination when pressed by counsel for the General Counsel, his testimony seemed somewhat more corroborative of Flodquist, as he testified, "I told him that they had walked off the line and that they want to take a break and wanted to talk to him." However, he

[4] His testimony is in direct contradiction to a statement of position letter composed by Flodquist and signed by both of them which was submitted by Respondent during the investigation of this case.

[5] On cross-examination, Flodquist admitted that he could not recall Ferrari's "exact words." His demeanor suggested a lack of any certainty as to what Ferrari told him. Flodquist also testified on cross-examination at variance with his direct testimony that Ferrari made no mention of Searls' and Sitarski's desire for a break.

further testified on cross-examination as to a third version:

> When I went in to talk to Mr. Flodquist I said that Searls and Sitarski walked off the line to take a break. They wanted to take—they came out to me and asked me—told me they were going to take a break. And that they wanted to talk to him. So then I—that's—well that's all there is to tell.

He then testifled that he did not tell Flodquist where they were. Significantly, Ferrari's versions indicate that he told Flodquist not that the two employees simply walked off the line and arbitrarily took a break, but that they ceased working and manifested a desire for a break, *and* asked to talk to Flodquist about it. Moreover, I conclude that Ferrari inadvertently revealed the truth in his third version when he started to characterize their statement as a request for a break and for a meeting. Ferrari's testimony is silent as to whether Flodquist reacted by precipitously terminating the conversation with a rush from the room. In any event, Ferrari proceeded with his work task and did not join Flodquist, and did not become aware of the fate of the two employees until about 15–20 minutes later. He testified to no urgency requiring his presence elsewhere, nor to any specific production crises.

Flodquist confronted Searls and Sitarski in the lunchroom. There are no other known witnesses to this encounter. All three versions vary. Searls testified that the following sequence of events occurred: He and Sitarski proceeded, as Ferrari instructed, to the lunchroom where after 2 or 3 minutes Flodquist appeared and asked, "[W]hat's the problem?" Searls responded, "[W]e would like to take our breaks."[6] Flodquist replied, "Okay. To start with, you're both going to be discharged," and (pointing to Sitarski) "And, you'll never work here again." Flodquist added that "I'm also going to enter into your records that you walked off the line." Searls asked why they were being discharged and asserted that all they wanted "was to have our two breaks like we were supposed to." Flodquist asked why they alone of all the employees should get a second break. Searls responded, "Everybody should have a break." Flodquist further stated that he would punch out their timecards and that they should change clothes and depart. Searls asserted to Flodquist that he was unreasonable whereupon he looked at Searls "very seriously and got pretty mad" and said, "[Y]ou know you're a pretty good worker; but ever since you started working here, you have done nothing but cause waves." At that point Flodquist walked out of the room. Sitarski did not speak at all.

Searls' cross-examination elicited the followinq additional exchange: After Searls responded that all employees should have a break he added, "[B]ecause if those proposals are not good we should get a break." At that point Flodquist stated, "[I]f you guys would have waited three or four weeks this would have been resolved anyways." Such statement could only have had reference to an ongoing discussion between himself and Paglione with respect to the renegotiation of a second break. Accordingly, I credit Flodquist's earlier testimony in that regard that at least some such discussion had occurred with Paglione.

If Flodquist was hostile to the alleqed discriminatees' protected activities, that hostility cannot successfully be argued to have been directed to the object of their activity, i.e., obtaining a second break for all employees, because Respondent was in the process of contemplating restoration of the second break and had initiated discussion with Paglione about it. The hostility must be attributed either to the manner whereby Sitarski and Searls sought that object, i.e., personal confrontation and concerted complaint, or to alleged misconduct.

Turning to Sitarski's version of the exit interview, the following occurred: They told Flodquist in response to his question as to their problem, "Today, we're going to make our production quota, and we would like to have our breaks." Flodquist answered, "Well, first of all, you're fired for walking off the line." He told Sitarski that he would never work there again and told *both* Sitarski *and* Searls that they "were just causing too many problems *within the past week* inquiring about breaks and inquiring about Mr. Chong."

Clearly, prior to March 25 neither Searls nor Sitarski had engaged in activity that could be characterized as "making waves." On cross-examination Searls conceded that his own employment relationship with Respondent was "like any other employee" and uneventful. His only encounter with a management representative where he raised complaints occurred on the evening of September 30. At that time, according to Searls' uncontradicted testimony, Flodquist brusquely turned them aside. Sitarski's only other contact with management representatives since his recall of March 25 was to have been limited to inquiries addressed to Ferrari as to the second break.

According to Flodquist, after he walked out of the office he turned in the direction of the lunchroom and saw Sitarski and Searls there. He asked them what their problem was. They, i.e., one or both of them, said they "wanted their breaks." Flodquist answered that "this had to be discussed." He then asked them to go back to work, and told them that they would be subject to discharge. According to Flodquist, he directed them three times over the course of 15–20 minutes to return to work and they said "no." On the third refusal, he discharged them.[7] Despite the length of the conversation, Flodquist could not recall what was discussed, except that to his "question" they responded that they were "taking a break." The best he could offer in his testimony was that "some words transpired." He did not explicitly deny any part of Searls' and Sitarski's testimony except when, upon inquiry from the court, he denied the "making waves" accusation. He further testified, again only upon inquiry by the court, that neither Ferrari nor any other subordinate nor any union representative reported to him that Sitarski or Searls individually or together had made

[6] On cross-examination he testified that he responded, "[W]e want to *find out* about getting our breaks."

[7] Searls estimated that only 10 minutes elapsed from the time they first spoke to Farrari until the moment they were punched out. Sitarski put his estimate at 12 to 15 minutes.

complaints about working conditions or had engaged in any activity of that nature. Neither Sitarski nor Searls was recalled to explictly rebut any portion of Flodquist's account of the exit interview. However, Searls, in his detailed step-by-step account of the conversation, explictly denied that Flodquist had suggested that they go back to work or that they were in jeopardy of termination if they did not return to work.

Flodquist testified that Ferrari told him of Searls' and Sitarski's work cessation between 2:30–2:35 p.m. He estimated that at 2:50 p.m. he had punched out their timecards as of 2:30, the time Ferrari later told him they left the line. According to Flodquist, after the discharge enough employees were kept on to finish the production in process and all others were sent home at 2:48 p.m. Normal shift end is 4:40 p.m. All employees were paid, however, up to 4:30 p.m. Later the same day, Flodquist changed Searls' and Sitarski's punchout time to 2:50 p.m. According to Flodquist, the line could not be operated without a mixer and, besides Searls, the only qualified mixers were Ferrari and Franco Peruzzo who was then being utilized in the AR-Lite division. Flodquist testified that he could not have assigned Ferrari to mixing because he would still have been short a "stacker," i.e., Sitarski's job. His explanation was cryptic, unspecified, and unconvincing.

Although Flodquist testified to the importance of maintaining the flow of production, the critical necessity for a mixer and stacker to be at their posts, the company policy prohibiting departures from work stations for reasons other than emergencies, retrieval of supplies, and toilet necessity, he did not testify on direct examination precisely as to the reason he discharged the two employees. The inference to be drawn from his direct testimony is that they disrupted production, violated company policy, and insubordinately refused to return to work.[8] Flodquist testified that when the mixer stops mixing the mold mixture the conveyer belt system, including mold filling, troweling of molds, baking, oven retrieval, cleaning, and stacking, will come to a halt in about 15 to 20 minutes. Searls testified also that the normal mixed batch of cement would last 15 minutes. Therefore, he had a full 15 minutes to prepare another batch. Obviously, as Flodquist testified, the mixture must be ready at the end of 15 minutes. Accordingly, he had sufficient time to take only brief departures of a few minutes in order to get supplies or to use the toilet facilities, or otherwise he had to obtain a substitute, e.g., Ferrari. Without a stacker, finished blocks would tumble onto the floor in disorder.

The record is not clear as to whether Respondent's policy requiring employees' presence at work stations is in written form. Ferrari's testimony was uncertain. Paglione's testimony was confusing. Flodquist testified that the rule was posted, and he testified, without objection, as to its substance which provided that employees whose unauthorized absence from their work station causes a work stoppage are subject to discharge. Respondent did not adduce it into evidence nor did the General Counsel demand its production. However, it is clear from Paglione's testimony as well as Sitarski's own testimony that Respondent's policy, written or not, provided that unauthorized departure from the production line, except for restricted circumstances, placed an employee in jeopardy of discharge.

Searls and Sitarski testified without contradiction that while they were in the lunchroom they could hear the normal sounds usually heard during routine continuation of production by the seven other AR-Blok employees, e.g., vibrator machines settling cement and blocks being knocked out of forms. Indeed, Flodquist's own testimony on cross-examination reveals that the production line continued to operate during the exit interview as evidenced by the continuation of normal production noise. Although Flodquist admitted that he really was unaware of what was transpiring on the production floor, he also testified: "Matt [Ferrari] went out there and made the necessary moves, I'm sure. I don't know what operators he moved to where." No one, however, replaced Searls. Indeed, at 2:48 p.m., according to Flodquist's cross-examination, only a couple of people, in all probability, were immediately sent home and the rest were used to phase down the operation. He also admitted that the discharge occurred before 2:48 p.m.[9]

Thus, there is no specific evidence that when Flodquist decided to discharge the employees there had been a disruption of work but, more importantly, it appears that Flodquist had no basis for assuming that work had halted or been disrupted. The only apparent halt in production occurred in consequence of Flodquist's postdischarge decision. Moreover, the facts reveal that Searls and Sitarski were absent from their work stations with the acquiescence and at least the implicit approval of their immediate supervisor, Ferrari, for the purpose of talking to Flodquist. Despite Ferrari's attempts at evasion, that is clear from his own testimony. Also clear from Ferrari's testimony is that he essentially so advised Flodquist, and I so find.

The second proffered basis for the discharges, i.e., outright insubordination and refusal to return to work duties, is complicated by testimony adduced by Respondent as to certain work deficiencies of Sitarski and by Respondent's statement of position dated April 1, 1981, and submitted during the course of the investigation of this case prior to the issuance of complaint by the Acting Regional Director.

I find it unnecessary to evaluate or even discuss the evidence as to Sitarski's alleged poor work habits, as it was admitted by Respondent's witnesses during the course of some convoluted testimony that Sitarski was discharaged solely for the March 31 incident. Flodquist alluded to Sitarski's alleged work deficiencies in the statement of position. The implication therein is that there was a causal relationship to the discharge. That position was clearly abandoned in his testimony. Searls was conceded to have been a good worker who held an apparently critical job function.

[8] On cross-examination he was more specific, as discussed below.

[9] Ferrari's testimony that the operation would cease in 3 minutes is not credible in light of not only Flodquist's testimony but the sequence of events. Further, it appears that even Flodquist's estimate is exaggerated in light of the continuation of operations well beyond 2:48 p.m. by the vast preponderance of employees.

In the investigatory statement of position, which is set forth in the format of a first-person statement of fact signed by Flodquist and Ferrari, Flodquist alluded to Searls' prior discussion regarding the afternoon break and the embryonic discussion with Paglione regarding it, and further stated:

> P. Searls is being discharged for undermining both the Union, Teamsters Local 24, and Architectural Research Corp. after leaving his work station without authorization and after being advised by both that what he intended to do was wrong.

Flodquist testified that after the discharge he discussed this case with Paglione before he composed the position statement, and then came to the conclusion that the dischargees had undermined the Union. He denied that "undermining the Union" was in fact a basis of his discharge at the time of the decision to discharge which was made before he consulted with the Union. In his testimony on cross-examination he reiterated, "They were discharged for leaving their work stations." But he also added, "They were discharged on the part of management for walking off the line and causing a work stoppage." His testimony that they were not discharged for undermining the Union is, of course, patently in contradiction to the plain language of the statement of position. Furthermore, there is nothing in Paglione's testimony to suggest that Paglione or the Union was adverse to obtaining an afternoon break for all employees, or that Paglione had instructed Searls or Sitarski to refrain from directly raising the issue with Flodquist at the plant in a personal confrontation. Paglione's only admonition to Searls was that they finish the workday before going to the union hall. There is also no evidence that Paglione had given Sitarski and Searls any intimation that negotiations were imminent between Respondent and the Union concerning an afternoon break. There is nothing in the record to suggest that personal concerted complaints of Sitarski and Searls were in any way disruptive of negotiations with the Union.

The only remaining basis for the March 31 discharges proffered by Respondent is the alleged insubordination. Evidence of insubordination rests upon the testimony of Flodquist. At the time of the trial, Flodquist was no longer employed by Respondent. Rather, he was employed by a competitor and had no further connection with Respondent. However, he was employed by Respondent at the time he committed himself as to a statement of position which he submitted to a governmental agency as a factual representation. Furthermore, a personal vindication is often as strong a bias, if not stronger, as is that of serving one's employer. Certainly Flodquist's demeanor at this trial gave no suggestion that he was a disinterested third party. His demeanor was that of an intensely interested party and emotionally involved person.

Weighed against Flodquist's testimony is the testimony of Searls and Sitarski. My difficulties with their credibility have been delineated herein. Based upon the entire record, despite all their credibility failings, I am constrained to credit the substance of their version of the March 31 confrontation with Flodquist. I cannot believe that Flodquist could have engaged in a conversation with two employees for the length of time he claimed, during which they thrice refused to comply with a direct order to return to work, without having recalled something of the substance of that conversation. The only explicit denial of the employees' testimony was elicited by the court, and it was rendered without certainty or conviction in demeanor. The sequence of events described above leads me to conclude that Flodquist exaggerated the length of the exit interview. Furthermore, there was no basis for him to have concluded that Searls and Sitarski had disrupted the work. He is contradicted by Ferrari as to what Ferrari told him. Having credited Ferrari, I conclude that Flodquist was aware that Searls and Sitarski had not merely walked off the line to take a break but that they had ceased work and asked to talk to Flodquist so they could inquire about and complain about a condition of employment. Ferrari contradicts Respondent's contention that they had disobeyed an order by Ferrari to return to their jobs. Prior to the discharge, Flodquist admittedly made no inquiry of Ferrari as to whether he had ordered them back to work. He was admittedly unaware of the status of the work, and assumed, by his own admission, that Ferrari had made necessary accommodations. The testimony of both the dischargees and Flodquist reveal that he was upset over their conduct. Nothing in the record warrants any justification for Flodquist's suggestion that he was concerned about production. Production, he assumed, continued as evidenced by what he heard and what he presumed Ferrari would do as a matter of routine practice. Flodquist's testimony, I conclude, contains inconsistencies and improbabilities which are of graver import than the type of inconsistencies found in the testimony of the lesser educated and unsophisticated discharged shopworkers. Much of the inconsistency in their testimony was due to Sitarski whose memory was indeed quite poor. But from my observation of his demeanor, his uncertainty in larger part was caused by a sheer fright induced by a rapid, voluble, agressive cross-examination. I cannot conclude that Sitarski's confusion was necessarily due to a lack of candor. Overall, I conclude that he was an essentially honest witness in this proceeding. Despite Searls' tendency to embellish, I conclude the same with respect to him. I make these conclusions despite testimony upon which it may be argued that Sitarski and Searls engaged in misrepresentations to the Michigan Employment Security Commission regarding their postdischarge unemployment compensation claims. The evidence herein is too unclear to premise any definitive conclusions as to this collateral credibility issue. However, assuming that they did engage in such misrepresentations, my conclusons in this case would be the same. Untruthfulness in one area does not necessarily render that witness totally discredited in all areas. *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950). Furthermore, although Flodquist appeared to be the more polished, literate witness, his testimony, in addition to the above debilities, was far more cryptic and his demeanor was far less spontaneous, and infinitely less convincing, than that of Searls and Sitarski.

Having credited the substance of the testimony of Sitarski and Searls, I conclude that they were not discharged because of insubordination. Rather, the inescapable conclusion is that Flodquist became angered with them because in 2 successive days they had attempted to engage Flodquist in confrontations wherein their objective was to complain about the lack of an afternoon break. Flodquist had informed them the night before that the matter would be discussed further (i.e., with the Union and with higher management). Now the same two employees persisted in pressing the issue again. Flodquist's patience was exhausted as he rushed out of his office to confront them and discharge them. I conclude, because of their persistent complaints regarding an afternoon break.

B. *Analysis and Conclusions*

It is not disputed that in the normal course of events the nature of Searls' and Sitarski's conduct for which they were discharged would constitute concerted activities protected by the Act. That protection would not have been jeopardized because of the timing of the conduct because, as found herein, they were granted implicit, if not explicit, permission by their immediate supervisor to cease work as he arranged a meeting for the purpose of discussing their complaints. Moreover, a brief intrusion into worktime by employees engaged in protected activities does not forfeit the protected nature of such activity, particularly in the absence of evidence of the extent, if any, of the impairment of production, and furthermore such brief intrusion is not equivalent to a strike when the purpose is informational, as it was herein. *Empire Steel Mfg. Co.*, 234 NLRB 530, 532 (1981).

The factual situation herein does not involve the breaking of any company rule or policy, nor does it involve actual or good-faith belief of misconduct. The factual complication in this case is that the employees, including the dischargees, were represented by a labor organization, and a collective-bargaining agreement existed which covered their terms and conditions of employment, and which by way of an addenda of concessions explicitly covered the matter of the amount of breaks.

Respondent does not, in its brief, explicitly raise the issue of exclusivity of representation. However, Flodquist apparently was obliquely aware of the essence of that principle when he referred to the undermining of the Union as one of the shifting reasons he advanced for the discharge in his April 1981 statement of position. Despite Respondent's failure to press this issue, it must necessarily be resolved before it can be concluded that Searls' and Sitarski's conduct was protected.

An employer is obliged to bargain solely with the employees' designated bargaining agent and may deal with no other. *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678 (1944). Section 9(a) of the Act, however, contains the following proviso:

> That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such ajustment.

Dissident members or minority factions of the bargaining unit are in jeopardy of losing the protection of the Act if they seek not to present a grievance, but to bargain with an employer in derogation of the exclusive bargaining agent, i.e., the union. *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50 (1975.)

In this case Searls and Sitarski did not engage in an attempt to bargain with Respondent over the afternoon break. They did not seek to renegotiate the contract. They did nothing inapposite to the bargaining position of the Union. According to their own insights, they had doubts as to the validity of the contractual concessions and considered that perhaps their original preconcession right to a second break was due them. Convincing argument can be made that they were accordingly asserting their rights under the collective-bargaining contract and thus they were engaged in protected activity. Compare *Bunney Bros. Construction Co.*, 139 NLRB 1516 (1962); and see also *Interboro Contractors*, 157 NLRB 1295 (1966), enfd. 388 F.2d 495 (2d Cir. 1967); *NLRB v. Northern Metal Co.*, 440 F.2d 881 (3d Cir. 1971). Whether or not their contractual interpretation is correct or not is irrelevant. *Interboro Contractors, supra* at 1298.

Regardless of whether they were asserting what they conceived to be a contract right, Sitarski and Searls clearly were acting concertedly in accord with the interest of the Union which, unknown to them, was concurrently in the process of seeking the same objective through negotiation. Their confrontation with Flodquist was informational in nature and a prelude to the filing of a grievance. They attempted to find out why, given certain circumstances, they were not entitled to a second break as provided in the original preconcession contract agreement, and they wanted to inform Respondent of their feelings about it, and to complain. Their conduct, if anything, reinforced the position of the Union. Cf. *East Chicago Rehabiliation Center*, 259 NLRB 996 (1982). The *Emporium* case does not permit the discharge of employees for presenting grievances. *Richardson Paint Co. v. NLRB*, 574 F.2d 1195 (5th Cir. 1978). Even if the dischargees' activities were more of a spur to the Union to take action, rather than a reinforcement of what the Union was already doing, their conduct still would not lose its protected nature. *Pacemaker Yacht Co.*, 253 NLRB 828, 831, fn. 8 (1980); *Armco Steel Corp.*, 232 NLRB 696 (1977).

By their conduct Sitarski and Searls in effect were alerting Respondent to what they felt was a disagreeable working condition in the hope that correction would be made by Respondent voluntarily or in future grievance negotiations with the Union and they were therefore protected by the Act. *Empire Steel Mfg. Co.*, 234 NLRB 530, 532.

I conclude that their protected conduct, which served as a reinforcement of the Union and/or as a prod to the

Union and Respondent to negotiate, angered Flodquist as an impertinence and motivated the discharge. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act as alleged in the complaint, and that such unfair labor practice has a substantial effect on interstate commerce within the meaning of Section 2(6) and (7) of the Act.

III. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent unlawfully discharged Gregory Sitarski and Phillip Searls, I shall recommend that Respondent be ordered to offer them reinstatement to their former, or substantially equivalent, jobs without prejudice to their seniority or other rights and privileges previously enjoyed and make them whole for any loss of earnings that they may have suffered thereby with interest thereon to be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).[10] I shall also recommend that Respondent expunge from its records any reference to their unlawful discharges on March 31, 1981, and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions againt them.

Upon the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I make the following recommeded:

ORDER[11]

The Respondent, Architectural Research Corporation, Livonia, Michigan, its officers, supervisors, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act by discharging them for engaging in protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Gregory Sitarski and Phillip Searls reinstatement to their former, or substantially equivalent, jobs without prejudice to their seniority or other rights and privileges previously enjoyed and make them whole for any loss of pay they may have suffered as a result of their March 31, 1981, discharges computed in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Expunge from its files any reference to the discharges of Gregory Sitarski and Phillip Searls on March 31, 1981, and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them.

(c) Preserve and, upon request, make available to the Board, or its agents, for examination and copying, all payroll and all other records required to ascertain the amount of any backpay due under the terms of this Order.

(d) Post at its Livonia, Michigan, facility copies of the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[10] See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[12] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."